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No. 92-2051

In The

Supreme Court of the United States

October Term, 1993

RICHARD G.D. LAFFERTY
CURGEO AGENCIES, INC.,

Petitioners,

v.

MRS. MARGRET REY,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit correctly conclude that the right to produce videocassette tapes was not encompassed by the contractual language "solely for broadcast on television" and "for television viewing" included in license agreements granting the limited right to produce television film episodes of "Curious George", particularly where the right to produce such videocassette tapes was granted expressly in a later and related ancillary products agreement?

2. Did the United States Court of Appeals for the First Circuit properly determine, based on its review of the substantial evidence in the record, that under the terms of a product approval process specifically articulated in an ancillary products agreement licensing the use of the "Curious George" character, Mrs. Rey retained and properly exercised the right reasonably to withhold her approval of any product?

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

A. Introduction 1

B. Facts 2

C. Prior Proceedings 5

REASONS FOR DENYING THE WRIT 7

I. THERE IS NO "CONFLICT" IN THE CIRCUIT COURTS THAT WARRANTS RESOLUTION BY THIS COURT BECAUSE THE INTERPRETATION OF LICENSING AGREEMENTS SUCH AS THE 1979 AGREEMENT IS BASED ON THE SPECIFIC CONTRACTUAL LANGUAGE IN SUCH AGREEMENTS AND THE FACTS SURROUNDING THEIR EXECUTION AND IMPLEMENTATION 8

II. THERE IS NO IMPORTANT LEGAL ISSUE RAISED BY PETITIONERS TO BE REVIEWED BY THIS COURT BECAUSE THE FIRST CIRCUIT COURT OF APPEALS CORRECTLY FOUND THAT UNDER THE TERMS OF THE PRODUCT APPROVAL PROCESS ARTICULATED IN THE ANCILLARY PRODUCTS AGREEMENT MRS. REY RETAINED AND PROPERLY EXERCISED THE RIGHT REASONABLY TO WITHHOLD HER APPROVAL OF ANY PRODUCT 15

CONCLUSION 18

TABLE OF AUTHORITIES

Page

CASES:

Bartsch v. Metro-Goldwyn-Mayer, Inc., 391 F.2d 150 (2d Cir. 1968), *cert. denied*, 393 U.S. 826 (1968) 12, 13

Cohen v. Paramount Pictures Corp., 845 F.2d 851 (9th Cir. 1988) 11, 12

Margret Rey v. Richard G.D. Lafferty, et al., No. 91-10501-Z, slip op. (D. Mass. Nov. 8, 1991), *rev'd in part, aff'd in part*, No. 92-1139, slip. op. (1st Cir. Mar. 30, 1993) 6

Margret Rey v. Richard G.D. Lafferty, et al., No. 92-1139, slip op. (1st Cir. Mar. 30, 1993) 6

Platinum Record Co., Inc. v. Lucasfilm, Ltd., 566 F. Supp. 226 (D. N.J. 1983)..... 13

Rooney v. Columbia Pictures Indus., 538 F. Supp. 211 (S.D.N.Y. 1982), *aff'd*, 714 F.2d 117 (2d Cir. 1982), *cert. denied*, 460 U.S. 1094 (1983) 13

Tele-Pac, Inc. v. Grainger, 570 N.Y.S.2d 521, *appeal dismissed*, 580 N.Y.S.2d 201 (1991)..... 12, 14, 15

STATUTES AND RULES:

Supreme Court Rule 10..... 7

16 Wright, Miller & Cooper, Federal Practice and Procedure § 4004 at 509 (1977)..... 7

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

A. Introduction.

The Petition for Writ of Certiorari ("Petition") of petitioners Richard G.D. Lafferty ("Lafferty") and Curgeo Agencies, Inc. ("Curgeo") (together, "Petitioners") presents no special or important reason for this Court to review further Petitioners' claims under expired contracts in which respondent Margret Rey granted certain specific rights to the use of the "Curious George" character. First, as the district court and the First Circuit correctly found, Mrs. Rey limited the rights granted in 1978 and 1979

licensing agreements to the production and distribution of television film episodes of "Curious George" solely for broadcast on television, and expressly granted the right to produce videocassette tapes of those film episodes in a subsequent ancillary products agreement executed in 1983. Second, as the First Circuit properly concluded, under the product approval process explicitly articulated in the ancillary products agreement, Mrs. Rey did not unreasonably withhold her approval of certain products depicting the "Curious George" character. As straightforward issues of contract interpretation, the questions presented by this case do not impact the meanings of any statutes, constitutional provisions or fundamental legal principles. Because the Petition does not raise any important question that would have a significant effect on parties other than the individual litigants in this case, and because the decisions below turn on particular facts and contractual arrangements that are unique to this action, no writ of certiorari should issue.

B. Facts.

In their Petition, Petitioners misstate the rights Mrs. Rey granted to Milktrain, Inc. Ltd. ("Milktrain") and Lafferty, Harwood & Partners ("LHP") under the licensing agreements dated January 17, 1978 (the "1978 Agreement"), and November 5, 1979 (the "1979 Agreement"), Appendix to Petition ("Pet. App.") at 57a-71a[1]. Neither agreement gave LHP and Milktrain all "rights, title and

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[1] For reference to the relevant contracts as well as the decisions of the courts below, Mrs. Rey's opposition will cite to the Appendix to the Petition.

interest" in the 104 television film episodes featuring "Curious George," as Petitioners erroneously claim. *See* Petition at (i), 3, 7 and 18.[2] Rather, the 1978 Agreement granted a limited license "to produce . . . one hundred four (104) four minute film episodes based on the ["Curious George"] character *solely for broadcast on television*". Pet. App. at 58a (emphasis added). The 1979 Agreement, which revised the 1978 Agreement, recited that the original 1978 Agreement had granted to Milktrain and LHP the limited right to "produce and distribute short television films" . . . "for television viewing." Pet. App. at 65a. Neither agreement contained any other right to "Curious George".

In 1979, prior to the execution of the 1979 Agreement, LHP had sought Mrs. Rey's consent to change the 1978 Agreement so as to include language which would have granted LHP the immediate right to exploit ancillary rights to "Curious George." Mrs. Rey explicitly rejected that proposal and stated that she would not consider negotiating such rights until the 104 films episodes were complete. Pet. App. at 8a. Accordingly, the only reference in the 1979 Agreement to "ancillary product" rights was a

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[2] The language "all right, title and interest" is from a different contract executed in 1979 by and between LHP and Milktrain only, and *not* Mrs. Rey, regarding the financing of the film project. *See* Pet. App. at 6a-9a. Whether Mrs. Rey granted LHP "all right, title and interest" in the 104 film episodes was an issue at the trial before the district court and was briefed extensively by the parties in Lafferty's appeal of the district court decision to the First Circuit. Both the district court and the First Circuit properly found that Mrs. Rey never signed the agreement between LHP and Milktrain and that she was, therefore, not bound by that agreement. Pet. App. at 51a, 16a-20a.

clause stating that Mrs. Rey would be "willing to enter negotiations" for such rights at a later date. Pet. App. at 67a.

After production of the 104 television episodes was completed in 1982, Mrs. Rey and LHP executed an Ancillary Products Agreement (the "APA") on January 3, 1983 that gave LHP a general right to license "Curious George" in spin-off ("ancillary") products for a renewable term of five years. Pet. App. at 72a. The APA defined "ancillary products" as:

> all tangible goods and merchandise excluding books, films, tapes, records or video productions. . . . However, for stories already owned by [LHP] and which have been produced as 104 episodes under the license granted in the January, 1978 agreement and the November 5, 1979 revision of that agreement, [LHP] shall have the right to produce books, films, tapes, records *and video productions of these episodes* under this Agreement, subject to [Mrs. Rey's] prior approval as set forth herein, which prior approval shall not be unreasonably withheld.

Pet. App. at 73a-74a (emphasis added). Thus, the *APA*, and *not* the 1978 or 1979 Agreements gave LHP the right to produce videocassette tapes of the 104 film episodes.

The APA also articulated a product approval process in which Mrs. Rey retained the right to withhold reasonably her approval of any ancillary product. The APA stated that LHP would submit "product" or other information sufficient to describe the "product" to Mrs. Rey for her approval.

> If we do not receive any disapproval of the product from you within two weeks we are entitled to presume that you approve of the product. If you do disapprove of any product, you will, *if feasible, suggest such changes* to [LHP] as may render the product acceptable to you, or, *if you cannot make such feasible suggestions, you may refuse to approve the product*. Product approval will not be unreasonably withheld.

Pet. App. at 75a (emphasis added).

In October, 1987, the parties amended and extended the APA, and on April 10, 1989, it was terminated by Mrs. Rey.

C. Prior Proceedings.

On February 8, 1991, Mrs. Rey sued Petitioners and LHP for injunctive relief and damages in the United States District Court for the District of Massachusetts for LHP's continuing unauthorized production of, among other things, videocassette tapes of the film episodes. LHP counterclaimed, alleging that Mrs. Rey unreasonably had withheld approval of various ancillary products while the APA remained in force.

After a four-day bench trial, the district court held that:

> the Sony videotapes are . . . not included in the [1979 Agreement], in part because the parties explicitly refer to those in the [APA] and, also, because the case law appears to suggest that although television – there's reference to television viewing, that in a licensing agreement that does not include anything that probably was not

> in existence at the time that the rights were given.

Margret Rey v. Richard G.D. Lafferty, et al., No. 91-10501-Z, slip op. at 3 (D. Mass. Nov. 8, 1991), *rev'd in part, aff'd in part*, No. 92-1139, slip. op. (1st Cir. March 30, 1993), Pet. App. at 52a. Accordingly, the court awarded Mrs. Rey royalties for Petitioners' production of the videocassette tapes pursuant to the APA. Pet. App. at 56a.

The district court also found that although Mrs. Rey "unquestionably approved many products," she acted "unreasonably" with respect to three projects depicting "Curious George" (pajamas, plush toys and software). Pet. App. at 53a-54a.

In their appeal to the United States Court of Appeals for the First Circuit, Petitioners challenged the district court's holding that the production of videocassette tapes was not among the limited rights granted by Mrs. Rey in the 1979 Agreement. Mrs. Rey cross-appealed on the grounds that she did not unreasonably withhold her approval of certain ancillary products. Pet. App. at 4a.

After its examination of the evidence before the district court, the First Circuit issued a forty-two (42) page decision in which it affirmed the district court's decision that the right to produce and distribute videocassette tapes was granted in the APA and not in the 1979 Agreement. *Margret Rey v. Richard G.D. Lafferty, et al*, No. 92-1139, slip op. at 14, 26, 28 (1st Cir. Mar. 30, 1993), Pet. App. at 16a, 28a, 31a.

The First Circuit also reversed the district court's finding that Mrs. Rey unreasonably withheld her approval of the ancillary products at issue. In its review

of the record and its analysis of the language of the product approval process articulated in the APA, the parties' course of conduct and the facts surrounding the particular product rejections challenged on appeal, the First Circuit found not only that there were certain limitations to Mrs. Rey's right to disapprove of products, but also that she acted within those limitations. Pet. App. at 31a-44a.

Petitioners subsequently filed a petition for rehearing on April 22, 1993, which the First Circuit denied on May 5, 1993. Their Petition for Writ of Certiorari followed.

REASONS FOR DENYING THE WRIT

While this Court's decision to grant a petition for writ of certiorari is discretionary, "[g]eneral public importance of the issues, and the need to secure uniformity of federal law must be the basic touchstones" of a decision to grant certiorari. 16 Wright, Miller & Cooper, Federal Practice and Procedure § 4004 at 509 (1977).[3] A consideration of these "touchstones" confirms the need to deny certiorari on both questions presented by Petitioners. Neither include issues of general public importance and their consideration by this Court would have virtually no future impact or application on individuals other than the litigants in this case. Indeed, the courts below resolved both issues after a thorough and detailed review of the

[3] *See also* Supreme Court Rule 10 ("[a] petition for a writ of certiorari will be granted only when there are special and important reasons therefor").

facts specific to this case, the content and relationship of the particular and unique licensing agreements (which have *expired*), the parties' underlying negotiations of those agreements, as well as a thoughtful and extensive analysis of the applicable case law. Because both issues presented by Petitioners would require this Court to make fact-dominant determinations, they are inappropriate for review in the context of this case. Accordingly, certiorari should be denied.

I. THERE IS NO "CONFLICT" IN THE CIRCUIT COURTS THAT WARRANTS RESOLUTION BY THIS COURT BECAUSE THE INTERPRETATION OF LICENSING AGREEMENTS SUCH AS THE 1979 AGREEMENT IS BASED ON THE SPECIFIC CONTRACTUAL LANGUAGE IN SUCH AGREEMENTS AND THE FACTS SURROUNDING THEIR EXECUTION AND IMPLEMENTATION

Petitioners misrepresent the reasoning underlying the district court's and First Circuit's correct determination that the 1979 Agreement did not govern the production of videocassette tapes. Their decisions rest on an examination of the substantial evidence in the record, including the specific contractual language of the 1979 Agreement and the APA, the parties' negotiations of those agreements, and their conduct thereunder. They do not rely merely on an interpretation of whether videocassettes were an existing or foreseeable "technological advancement" that should have been governed by the 1979 Agreement and they do not make any conclusion of law that another circuit court might dispute.

The 1979 Agreement and the APA have now expired and all that is at issue with respect to the licensing of videocassette tapes are certain royalties Petitioners owe to Mrs. Rey. Review of these agreements by this Court to determine if the 1979 Agreement covered the production of videocassette tapes would require re-examination of the facts of this case, would have a limited impact on the rights of the parties, and would have little, if any, prospective importance for the drafting of such agreements in the future since videocassettes and VCR's are no longer a "new use."

When the district court found that the 1979 Agreement did not include production of videocassette tapes, it did so not simply "because video technology did not exist in 1979," as Petitioners claim, Petition at 4, but also *"because the parties explicitly refer to those in the [APA]."* Pet. App. at 52a (emphasis added).[4] When the First Circuit affirmed this holding, the question of whether videocassettes existed in 1978 and 1979 represented only a fraction of its analysis. Specifically, the First Circuit stated that *"[f]or purposes of the present appeal,* we accept the *uncontested* district court finding that the relevant video technology 'was not in existence at the time that the rights' were granted under the [1979 Agreement]." Pet. App. at 21a (emphasis added). By this language, the First

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[4] In their Summary Of Facts, Petitioners completely ignore this finding by the district court, Petition at 4; and in their argument, they entirely overlook the APA, ("[t]here are two licensing agreements involved in the case at bar. The first agreement, entered into in 1978. . . . [and] [t]he 1979 agreement. . . . "). Petition at 7.

Circuit limited its position on the existence of videocassette technology in 1978 and 1979 to this case. Moreover, the First Circuit did not rest its opinion on this finding; rather, it affirmed the district court's decision for three independent reasons that are based on a lengthy and thorough examination of the relevant case law, Pet. App. at 21a-28a, as it applied to the specific language and intent of the 1979 Agreement and the APA. Pet. App. at 28a-31a.

First, the First Circuit correctly held that *unlike* the cases in which courts have found videocassette rights encompassed by licensing agreements, Pet. App. at 25a-26a, the 1979 Agreement "contained no general grant of rights in technologies yet to be developed, and no explicit reference to 'future methods' of exhibition." Rather, the 1979 Agreement contemplated a "comparatively limited and particular grant of rights, encompassing only the 104 film episodes and leaving future uses of "Curious George" *to later negotiation in the ancillary products agreement*." Pet. App. at 28a-29a (emphasis added).

This finding is clearly supported by the language in the APA defining ancillary products to include "video productions" of the 104 film episodes produced under the 1978 and 1979 Agreements.[5] Pet. App. at 73a. It is also consistent with the fact that: (1) Mrs. Rey explicitly

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[5] As the First Circuit noted, "[t]hroughout the document the term 'this Agreement,' utilizing the capital letter 'A', refers to the APA. Thus, the plain language of the operative provision clearly contemplates that the APA was to govern the licensing of any books and 'video productions' arising from the 104 films." Pet. App. at 16a.

rejected Lafferty's attempts to revise the 1978 Agreement so as to include such ancillary rights in the 1979 Agreement, Pet. App. at 8a; and (2) LHP paid Mrs. Rey royalties for the videocassette productions under the royalty payment schedule set forth in the APA. Pet. App. at 19a.

Only as its second point did the First Circuit cite *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851 (9th Cir. 1988) for the proposition that " 'television viewing' ", and " 'videocassette viewing' " are not coextensive terms. Pet. App. at 29a. The First Circuit went further, however, and examined the evidence in *this case* to find "insufficient reliable indicia of a contrary mutual intent on the part of Rey and LHP to warrant disturbing the district court's implicit determination that the language of the [1979 Agreement] is not 'broad enough to cover the new use' ". Pet. App. at 30a.

Finally, the First Circuit examined the factual circumstances surrounding the negotiations of the 1979 Agreement (in which the term "for broadcast on television" was paraphrased as "for television viewing"), and found that it:

> (including its 'television viewing' clause) was drafted and proposed by LHP, a professional investment firm accustomed to licensing agreements. Rey, an elderly woman, does not appear to have participated in its drafting, and, indeed, does not appear to have been represented by counsel during the larger part of the transaction.

Pet. App. at 30a. In these circumstances the First Circuit concluded that any ambiguities in the 1979 Agreement must be construed against LHP, the more sophisticated

party. *See also Bartsch v. Metro-Goldwyn-Mayer, Inc.*, 391 F.2d 150, 154 and n. 2 (2d Cir. 1968), *cert. denied*, 393 U.S. 826 (1968) (whether grantor should be charged with knowledge of a new medium depends on whether or not he is an experienced businessman).

Thus, the First Circuit's analysis is replete with factual findings specific to this case that clearly reveal the correctness of the district court's and First Circuit's decisions. These findings make it unlikely that this Court would ever reach the point of alleged "conflict" in the circuit courts that Petitioners suggest exists regarding the interpretation of licensing agreements when videocassette technology is involved. Moreover, there is no such conflict that warrants review or resolution by this Court. The First Circuit was careful to reconcile its decision with all relevant case law, including the Second Circuit's analysis in *Bartsch v. Metro-Goldwyn-Mayer, Inc.*, 391 F.2d 150 (1968), *cert. denied*, 393 U.S. 826 (1968), and the Ninth Circuit's findings in *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851 (9th Cir. 1988). Those decisions, as well as the conclusions in other cases considering the extension of licensing rights to video technology, rest, as the decisions did in this case, on the specific contractual language at issue. *See* Pet. App. at 21a-28a. Finally, *Bartsch*, which Petitioners urge this Court to adopt, not only is distinguishable on its facts, but also interprets New York law in a manner that was later rejected in a subsequent New York state action. *See Tele-Pac, Inc. v. Grainger*, 570 N.Y.S.2d 521, *appeal dismissed*, 580 N.Y.S.2d 201 (1991).

Bartsch has nothing to do with videocassette tapes or the use of VCRs and applies, if at all, only where there is

an extremely broad assignment of licensing rights.[6] The contract at issue granted the motion picture rights to a musical play, including "all our right, title and interest in and in connection with such motion picture rights of the said operetta or musical play, throughout the world," and the right "to copyright, vend, license and exhibit such motion picture photoplays throughout the world. . . ." 391 F.2d at 151. The court relied on the latter clause to find under New York law that the assignment of rights included the right to exhibit the motion picture photoplays on television even though television was a technological advancement not specifically contemplated by the contract. *Id.* at 153-155.[7] The court focused on the word "exhibit" which it defined as "to 'display' or to 'show' by any method", and found that "nothing in the rest of the grant sufficiently reveals a contrary intention" to limit the meaning of the rights assigned. *Id.* at 154. Indeed, no contrary intention could be found. *See id.* at 155.

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[6] *See also* Pet. App. at 25a-26a in which the First Circuit correctly distinguished the extremely broad and unambiguous contractual language in the licensing agreements at issue in *Platinum Record Co., Inc. v. Lucasfilm, Ltd.*, 566 F. Supp. 226 (D. N.J. 1983) and *Rooney v. Columbia Pictures Indus.*, 538 F. Supp. 211 (S.D.N.Y. 1982), *aff'd*, 714 F.2d 117 (2d Cir. 1982), *cert. denied*, 460 U.S. 1094 (1983), two additional cases cited by Petitioners in support of their argument that exhibition on television includes exhibition through a home videocassette player.

[7] Petitioners rely on their erroneous claim that the 1979 Agreement granted LHP all "rights, title and interest" in the 104 television episodes, Petition at (i), 3, 7 and 18, *see supra* at n. 2, to suggest a parallel between this case and *Bartsch*. Petition at 9. Petitioners' argument is misplaced since that was *not* the language on which the *Bartsch* court focused. 391 F.2d at 153.

Unlike in *Bartsch*, there was no such broad grant of rights in the 1978 and 1979 Agreements and there is evidence of the parties' intent. The 1979 Agreement clearly reserved to *later negotiations* an ancillary products agreement which, when negotiated and subsequently executed, *explicitly included* the right to produce the very videocassette tapes that Petitioners erroneously claim are governed by the 1979 Agreement. Pet. App. at 67a, 73a.

Petitioners' reliance on *Bartsch* is also misplaced in light of *Tele-Pac, Inc. v. Grainger*, 570 N.Y.S.2d 521, *appeal dismissed*, 580 N.Y.S.2d 201 (1991), a later New York case that rejected the "new use" analysis in *Bartsch*. The court in *Tele-Pac* found that a license granting the right to distribute certain motion pictures "for broadcasting by television or any other similar device now known or hereafter to be made known" did not include the videocassette and videodisc rights to the motion pictures. 570 N.Y.S.2d at 522.[8] The court found the analysis and conclusions of *Cohen* regarding the distinction between television and videocassette display "even more fitting here, where, unlike *Cohen*, the agreement did not convey a license for the 'exhibition' of films by means of television but was specifically limited to broadcasting." *Id.* at 524. It then rejected the "new use" approach adopted in *Bartsch* because it correctly believed that the technologies used in a VCR and

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[8] According to the court, implicit in the concept of "broadcasting by television" is "transmission of sound and images from a point outside the home for reception by the general public. . . . Conversely, while one may speak of 'playing', 'showing', 'displaying' or even perhaps 'exhibiting' a videotape, we are unaware of any usage of the term 'broadcasting' in that context. The term must be construed in accordance with its plain and ordinary meaning." *Id.* at 523.

by television stations are so dissimilar as to not "reasonably" fall within the medium described in the license. *Id.* at 525.

Like the contract language in *Tele-Pac*, the grant of rights in the 1979 Agreement contemplated the original 1978 Agreement's assignment of the limited right to produce film episodes of "Curious George" solely for *broadcast* on television; unlike *Tele-Pac*, the 1979 Agreement did not refer to future broadcasting devices, thereby restricting the rights granted even further than those conferred in *Tele-Pac*. Finally, videocassette technology was expressly included in the APA. Accordingly, any distinctions that may exist between the circuit courts are irrelevant in the context of this case.

II. THERE IS NO IMPORTANT LEGAL ISSUE RAISED BY PETITIONERS TO BE REVIEWED BY THIS COURT BECAUSE THE FIRST CIRCUIT COURT OF APPEALS CORRECTLY FOUND THAT UNDER THE TERMS OF THE PRODUCT APPROVAL PROCESS ARTICULATED IN THE ANCILLARY PRODUCTS AGREEMENT MRS. REY RETAINED AND PROPERLY EXERCISED THE RIGHT REASONABLY TO WITHHOLD HER APPROVAL OF ANY PRODUCT

The second question presented by Petitioners for review involves a proposal that this Court adopt a new standard governing the relationship of licensors and licensees. The question does not appear to arise out of this case, and was not suggested to or considered by the First Circuit. Petitioners cite no cases in which this novel approach is either applied or rejected. Thus, it is difficult to understand the basis upon which Petitioners urge the

Court to consider this general idea. Even if the Court were to agree with the concept proposed, it would not apply to or affect this case because the *"prima facie* unreasonable" presumption suggested by Petitioners would be overcome by the specific contract language which the First Circuit analyzed carefully in its decision.

Petitioners request that this Court "resolve" purported "confusion" about a licensor's right to control the quality of licensed products. In some case this might be a legitimate request. In this case, however, there was no confusion with respect to a licensor's rights. Mrs. Rey's right to review and approve products was explicitly set forth in the APA in unambiguous language. *See* Pet. App. at 75a. The parties successfully operated pursuant to this language during the entire five years of the original APA term. Petitioners were usually satisfied with Mrs. Rey's approval, sometimes disappointed with a suggested modification, but never confused with respect to her or their rights.

"Curious George" was 40 years old at the time the APA was executed. He had built up goodwill with generations of consumers, and had always been associated with quality merchandise. Mrs. Rey and her husband H.A. Rey were devoted to "George's" reputation. The ancillary license sought by the Petitioners was valuable specifically because this trademark had been associated with the quality encouraged by the "unknowledgeable" Reys. Mrs. Rey retained the right to continue to protect "Curious George's" valuable reputation by specific contract language in the APA. Pet. App. at 75a. Petitioners desired to engage in mass licensing to obtain high short term revenue, sometimes without regard to long term

reputation. Mrs. Rey retained the right, and in a few instances exercised the right, to reject what appeared to her to be "junky" goods.

The district court incorrectly concluded that Mrs. Rey only retained the right to approve the quality of the "Curious George" logo, but not the quality of the "product" with which the logo was associated. Pet. App. at 53a. The First Circuit held that this conclusion was clearly erroneous because the APA and course of dealing among the parties clearly indicated that Mrs. Rey bargained for and obtained the contractual right to approve all licensed "products" not just the depiction of "Curious George".[9] The First Circuit went on to find that her exercise of that right was not shown in any instance to be unreasonable or beyond the limits agreed to in the APA. Pet. App. at 38a-44a.[10] Furthermore, there is nothing presumptively unreasonable about a licensor insisting on long term quality and reputation in lieu of short term revenues derived from "junky" products.

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[9] The First Circuit properly held that the use of the term "product" in the APA "indicates the parties' mutual intention that each *article* bearing the likeness of 'Curious George' – *not merely the likeness itself* – be approved by Rey." Pet. App. at 33a (emphasis added).

[10] Although to be "reasonable" Mrs. Rey had to articulate "some *material* reason, subjective or otherwise, for disapproving a product," Petition at 36a (emphasis in original), "the APA's 'reasonableness' constraint did *not* oblige Rey to apply lower standards, or to relax her vigilance in policing ancillary uses for the 'Curious George' character, merely because deadlines were tight or *objections to the product could not be cured*." If she disapproved of a product, only *"if feasible"* did Mrs. Rey need to "suggest such changes . . . as may render the product acceptable" to her, Pet. App. at 38a-39a n. 12 (emphasis added).

The theory presented for consideration by Petitioners is neither related to nor arising from this case, has not been briefed to, argued before or considered by any circuit court, is of little general significance and is not very persuasive on the merits. There is absolutely no reason why the Court should consider the question Petitioners have posed. It is nothing more than a thinly disguised request that the Court reconsider the reasonableness of Mrs. Rey's actions, which the First Circuit reviewed extensively and found to be reasonable in light of the facts of this case and explicit contract terms. Petitioners essentially ask that this Court weigh the evidence before the courts below, a task this Court should not be required to do.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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